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22 **UNITED STATES DISTRICT COURT**
23 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

24 KIM ALLEN, et al., on behalf of
25 themselves, all others similarly situated,
26 and the general public,

27 Plaintiffs,

28 v.

SIMILASAN CORPORATION,

Defendant.

Case No. 3:12-cv-00376-BAS(JLB)

CLASS ACTION

**JOINT EX PARTE MOTION TO
CORRECT SCRIVENER'S ERROR IN
SETTLEMENT AGREEMENT AND
CLARIFY NOTICE**

1 Plaintiffs and appointed Class Representatives Lainie Rideout and Kathleen
2 Hairston (“Plaintiffs”), by and through their counsel of record, and Defendant Similasan
3 Corporation, by and through its counsel of record, respectfully move this Court, *ex parte*,
4 for an Order correcting a typographical error in the Settlement Agreement filed with this
5 Court (Dkt. 202-4, “Agreement”), and to clarify the notice program in this case.

6 On March 31, 2016, the parties filed the Agreement, unaware that it contained a
7 scrivener’s error as to the deadline to object to the Agreement. The Parties intended that
8 the Class Members’ deadline to opt out and object to the Agreement should be thirty (30)
9 days before the Final Approval hearing date, as stated in paragraphs 9.5.1, 9.5.2, and 9.5.3
10 of the Agreement. Consistent with that understanding, the Court set the deadline to opt out
11 and object as thirty (30) days before the Final Approval hearing date in its Preliminary
12 Approval Order (Dkt. 204). But, the Agreement contains a scrivener’s error in paragraph
13 9.5.5 of the Agreement, which paragraph incorrectly states the deadline to object is
14 “twenty-one days before the Final Approval Hearing.” This scrivener’s error is an artefact
15 from a prior version of the agreement, conflicts with paragraphs 9.5.1 through 9.5.3 of the
16 Agreement which do reflect the Parties’ intent, and conflicts with the Court’s Preliminary
17 Approval Order. Therefore, the Court should order that the words “twenty-one” in
18 paragraph 9.5.5 now read “thirty.” In addition, the Parties are concurrently filing a Notice
19 of Errata, to correct the scrivener’s error.

20 Second, the Parties request the Court’s approval that they proceed with Media
21 Option 1 for Notice, as reflected at Dkt. No. 202-4, ECF page 35, *et seq.*, plus other
22 modifications deemed necessary after the Notice Plan was obtained. The Parties’ new
23 intended Notice Plan will eliminate Reader’s Digest, but add Spanish language translation
24 of the long Notice plus add Telephone Support, including Interactive Voice Recording
25 (IVR) with an option to speak with a live operator. The Parties believe the revised Notice
26 Plan complies with due process and will enhance notice.

1 For the foregoing reasons, the parties respectfully request this Court grant their *ex*
2 *parte* application.

3
4 Dated: May 18, 2016

Respectfully submitted,

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By: /s/ Ronald A. Marron
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11 Dated: May 18, 2016

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Dated: May 18, 2016 /s/ Ronald Marron
RONALD MARRON
Class Counsel